

1 THE HONORABLE RONALD B. LEIGHTON

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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 ROSALIND SMITH,

10 Plaintiff,

11 v.

12 WELLS FARGO BANK N.A., WELLS
13 FARGO HOME MORTGAGE, EAGLE
HOME MORTGAGE, and DOES ONE TO
14 TWENTY, INCLUSIVE,

15 Defendants.

No. CV11 5533RBL

**ORDER GRANTING DEFENDANTS
WELLS FARGO BANK, N.A.'S AND
WELLS FARGO HOME
MORTGAGE'S MOTION TO
DISMISS FOR FAILURE TO
STATE A CLAIM**

16 THIS MATTER has come on before this Court for hearing upon Defendants Wells
17 Fargo Bank, N.A.'s and Wells Fargo Home Mortgage's Motion to Dismiss for Failure to State
18 a Claim [Dkt. #16]. Plaintiff has not responded to the motion. The Court having reviewed the
19 records and files herein, hereby states as follows:

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- 21 1. Plaintiff has not alleged facts sufficient to establish that Wells Fargo is a "debt
22 collector" and subject to the Fair Debt Collection Practices Act.
 - 23 2. Plaintiff has not alleged facts sufficient to establish that Wells Fargo breached any
24 duty owed under the Fair Debt Collection Practices Act.
 - 25 3. Plaintiff has not alleged facts sufficient to state a claim under the Fair Credit
26 Reporting Act.
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1 4. Plaintiff has not alleged facts sufficient to state a claim under Washington law for
2 breach of contract, including the covenant of good faith and fair dealing, against
3 Wells Fargo.

4 5. Plaintiff has not alleged facts sufficient to state a claim under Washington law for
5 fraud or negligent misrepresentation.

6 6. Plaintiff's state law contract and tort claims against Wells Fargo are preempted by
7 the National Bank Act.

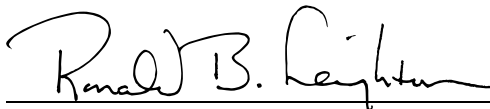
8 7. Plaintiff has not stated a claim for damages under TILA, where the one-year statute
9 of limitation began to run in October 2008.

10 8. Plaintiff has not stated a claim for rescission of her loan agreement under TILA,
11 where the loan was a "residential mortgage transaction," and she has not alleged any
12 ability to tender the principal.

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

14 Defendants Wells Fargo Bank, N.A.'s and Wells Fargo Home Mortgage's Motion to
15 Dismiss for Failure to State a Claim [Dkt. #16] is hereby **GRANTED**. Rosalind Smith's
16 claims against Wells Fargo Bank, N.A. and Wells Fargo Home Mortgage are dismissed with
17 prejudice, and without leave to amend.

18 Dated this 19th day of October, 2011.

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22 RONALD B. LEIGHTON
23 UNITED STATES DISTRICT JUDGE
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